

Steven S. Kane, Esq., SBN: 061670
Bonnie E. Kane, Esq., SBN: 167700
THE KANE LAW FIRM
402 W. Broadway, Suite 2500
San Diego, CA 92101
Telephone: (619) 236-8700
Facsimile: (619)236-1370
E-mail: skane@thekanelawfirm.com
E-mail: bonnie@thekanelawfirm.com

Attorneys for Fire Victim Claimants, including Kayla Lewandowski

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC
COMPANY

Debtors.

☐ Affects PG&E Corporation

☐ Affects Pacific Gas & Electric

☒ Affects Both Debtors

*All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

) **Case No. 19-30088 (DM)**
) Chapter 11
) (Lead Case)
) (Jointly Administered)
) **MOTION TO ALLOW/DEEM TIMELY**
) **LATE FILING OF PROOF OF CLAIM**
) **BY KAYLA LEWANDOWSKI;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **THEREOF; DECLARATION OF KAYLA**
) **LEWANDOWSKI**
) Date: August 9, 2022
) Time: 10:00 a.m.
) Place: **To Be Held Telephonically**
) United States Bankruptcy Court
) Courtroom 17
) 450 Golden Gate Avenue
) 16th Floor
) San Francisco, CA
) Judge: Honorable Dennis Montali

Objection Deadline: August 2, 2022

The Kane Law Firm respectfully files this motion to allow the late filing of a proof of claim and deem the proof of claim as having been timely filed for the moving party herein, Kayla Lewandowski.

1 I.

2 **SUMMARY OF ARGUMENT**

3 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
4 prejudice. The Supreme Court in *Pioneer Investment Services v. Brunswick Associated Ltd.*
5 *Partnership*, 507 U.S. 380 (1993) set forth the factors that must be considered in ruling on
6 whether a late claim should be allowed in the context of a bankruptcy filing. These factors to be
7 considered are as follows:

- 8 1. The danger of prejudice to the Debtor,
9 2. The length of delay and its potential impact on judicial proceedings,
10 3. The reason for the delay, including whether it was within the reasonable control of the
11 movant, and
12 4. Whether the movant acted in good faith. *Pioneer Investment Services, supra* at 395.

13 In this case, Kayla Lewandowski was living in a rented apartment in Chico, California.
14 She had stored personal property at her parents' home located at 840 Sun River Court, Paradise,
15 CA 95969. The Lewandowski home burned to the ground. Ms. Lewandowski lost all of her
16 personal belongings that were stored at her parents' home. She also suffered emotional distress
17 on the date of the fire, fearing that her parents, grand-father, and boyfriend might not make it out
18 alive. She then shared her 2-bedroom apartment with 12 people for 3 weeks after the fire and
19 accompanied her parents back to Paradise on numerous occasions to try to salvage what could be
20 saved from the fire. Because Ms. Lewandowski did not own her place of residence, she was
21 unaware that she could file a claim. Long after the deadline, she learned that she could file a
22 claim for her loss of property and emotional distress damages.

23 As set forth below, the movant meets all these factors. Indeed, if this motion is *not*
24 granted it is the movant who will suffer substantial prejudice.

25 II.

26 **PROCEDURAL BACKGROUND**

27 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric
28 Company ("Debtors") filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the

1 Court entered an order establishing October 21, 2019 (“the bar date”) as the deadline for Fire
2 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was
3 extended to December 31, 2019 (“the “extended bar date.”). *See* Dkt. 4872.

4 III.

5 FACTUAL BACKGROUND

6 On the date of the fire, Kayla Lewandowski was living at a rented apartment in Chico,
7 California. She had stored most of her personal belongings at her parents’ home in Paradise in
8 anticipation of returning to Paradise to live. The Lewandowski residence was located at 840 Sun
9 River Court, Paradise, California 95969. It burned to the ground. Ms. Lewandowski lost
10 personal property, including furniture, clothing, photos, and other childhood mementos. She was
11 unaware that she could file a claim for her loss of property and the emotional distress because she
12 was not the homeowner. She only recently learned that she could file a claim and has done so.
13 Ms. Lewandowski’s claim number is 108347, and submitted as Exhibit A to this motion.

14 IV.

15 ARGUMENT

16 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion
17 based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

18 (b) Enlargement.

19 (1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision,
20 when an act is required or allowed to be done at or within a specified period by
21 these rules or by a notice given thereunder or by order of court, the court for cause
22 shown may at any time in its discretion (1) with or without motion or notice order
23 the period enlarged if the request therefor is made before the expiration of the
24 period originally prescribed or as extended by a previous order or (2) **on motion
made after the expiration of the specified period permit the act to be done
where the failure to act was the result of excusable neglect.**

25 Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

26 Determination of excusable neglect has been interpreted by the United States Supreme
27 Court as an equitable consideration.

28 “We conclude the determination at bottom an equitable one, taking account of all relevant
circumstances surrounding the party’s omission. These include. . .the danger of prejudice
to the debtor, the length of the delay and its potential impact on judicial proceedings, the
reason for the delay, including whether it was within the reasonable control of the movant,
and whether the movant acted in good faith.” *Pioneer Inv. Servs v. Brunswick Assoc.
Ltd.P’ship*, 507 U.S. 380, 395 (1993)

1 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
2 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.
3 (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the
4 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

5 Further, the delay is not significant. The Trust has only completed determinations (not
6 reconsiderations or appeals) on only a percentage of the Claims. Allowing the late claim will not
7 delay the proceedings.

8 The reason for the delay in filing a claim was that Kayla Lewandowski
9 simplymisunderstoodthe process. Excusable neglect will be found even where sophisticated
10 attorneys miss a deadline. *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1006 (9th
11 Cir. 2006). The case for excusable neglect is even more compelling when the mistake was made
12 by an unrepresented layperson. *Id.*

13 Further, Kayla Lewandowskiacted in good faith. The failure to file was not based on
14 litigation tactics where a party deliberately misses a deadline to gain advantage. (See e.g., *Venice*
15 *Baking Co. v. Sophast Sales &Mkg. LLC* 2016 U.S. Dist LEXIS 141533 where relief was denied
16 because counsel purposefully chose not to oppose a motion as a litigation tactic). Here the delay
17 was inadvertent and the movant’s lack of understanding of the claims process after a trust fund
18 had already been established to satisfy the claim.

19 And, finally, the likelihood of injustice is great if this claim is not permitted. Kayla
20 Lewandowski is a Camp Fire victim whose primary avenue for compensation is through this
21 bankruptcy.

22 / / / / / / /

23 / / / / / /

24 / / / / /

25 / / / /

26 / / /

27 / /

28 /

1
2 V.

3 **CONCLUSION**

4 For the reasons set forth above, Movant respectfully requests that this Court enter an
5 Order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

- 6 1. Granting the Motion;
7 2. Finding that the Movant be allowed to file a Proof of Claim and deem it as having been
8 timely filed;
9 3. Granting such other or further relief as the Court deems just and proper.

10 Dated: July 17, 2022

Respectfully submitted,

11 THE KANE LAW FIRM

12
13
14 By: /s/ Bonnie E. Kane
15 BONNIE E. KANE
16 Attorneys for Kayla Lewandowski
17
18
19
20
21
22
23
24
25
26
27
28